



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 21, 2022

IN THE MATTER OF:

Appeal Board No. 622297

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determinations ruling the claimant not entitled to receive benefits, effective December 27, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 using the basic base period because the claimant did not work in at

least two calendar quarters during the base period, was not paid at least one and one-half times the high calendar quarter wages in the base period, and was not paid at least \$2,700 (221 times the minimum wage, rounded down to the nearest one hundred dollars) in one calendar quarter during the base period; and using the alternate base period because the claimant was not paid at least \$2,700 (221 times the minimum wage, rounded down to the nearest one hundred dollars) in one calendar quarter during the base period. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed March 14, 2022 (), the Administrative Law Judge overruled the initial determination with respect to the alternate base period.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for benefits on December 31, 2021, effective December 27, 2021. The claimant's basic base-period was the 3rd quarter of 2020 through the 2nd quarter of 2021 (July 1, 2020 through June 30, 2021). During the basic base period, the claimant earned \$2,032.35 during the 2nd quarter of 2021. The claimant had no other earning in her basic base period.

The claimant's alternate base period was the 4th quarter of 2020 through the 3rd of quarter of 2021 (October 1, 2020 through September 30, 2021). During the alternate base period, the claimant earned \$2,032.35 during the 2nd quarter of 2021 and \$2,638.60 during the 3rd quarter of 2021.

OPINION: The credible evidence establishes that the claimant is unable to establish a valid original claim using the basic base period. During the basic base period, the claimant only had remuneration in the 2nd quarter of 2021. She did not earn at least \$2,700 during that calendar quarter. In addition, as the claimant only worked one calendar quarter, she did not earn one and one-half times the high calendar quarter wages in the base period. She is therefore unable to establish a valid original claim using the basic base period.

The credible evidence also establishes that the claimant is unable to establish a valid original claim using the alternate base period. Specifically, while the claimant had remuneration in the 2nd and 3rd quarters of 2021 during the alternate base period, the claimant was not paid at least \$2,700 in wages in one of the calendar quarters of the alternate base period. Labor Law § 516 provides that the term "wages paid" shall be deemed

paid on the date such payments are made. The provisions of Labor Law § 516

are clear and unambiguous, and there is no authority to ignore the requirements of the statute. We conclude, therefore, that the claimant is unable to establish a valid original claim, effective December 27, 2021, using either the basic base period or the alternate base period.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determinations, ruling the claimant not entitled to receive benefits, effective December 27, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 using the

basic base period because the claimant did not work in at least two calendar quarters during the base period, was not paid at least one and one-half times the high calendar quarter wages in the base period, and was not paid at least \$2,700 (221 times the minimum wage, rounded down to the nearest one hundred dollars) in one calendar quarter during the base period; and using the alternate base period because the claimant was not paid at least \$2,700 (221 times the minimum wage, rounded down to the nearest one hundred dollars) in one calendar quarter during the base period, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER